

IN SENATE OF THE UNITED STATES.

MARCH 14, 1848.

Submitted, and ordered to be printed.

Mr. WESTCOTT, made the following

REPORT :

*The Committee of Claims, to which was referred the petition of Isabella Cole, executrix of William Cole deceased, report.*

That no proofs, documents or papers whatever, accompany this petition. The petitioner in support of the allegations made in it, is content with a reference to "*the memorial in the names of the executors of William Cole, to the commissioners under the late treaty between this government and the republic of Peru.*" That memorial it is presumed, with the proofs in support of it, if there are any, may be in the State Department; but the committee have not deemed it a duty, devolving on the members of the committee, to make inquiry at the department, or elsewhere, where the papers can be found, or otherwise to search for the testimony sustaining the claim. Claimants often when they prefer such petitions as this, seem to understand very little of their own duties, and still less of the duties of committees of Congress. When such petitions are not sustained by a particle of testimony; when references are made in a general manner, not specifying the dates of documents or describing them, so that they be specifically called for from the public departments, if in any of them, and especially when the department in which such papers are, is left to be presumed from the nature of the claim; the prayer should be refused until the petitioner presents the proofs in a proper manner. If a claim has been before Congress at prior sessions, that fact should be stated, and the action had upon it also particularly recited, and the dates and numbers of the printed documents specified. It is out of the question to expect that committees can perform this labor, which it is the duty of the petitioner to perform. In this case, it will be time enough after the proper proofs are laid before Congress, to make that inquiry, as to the correctness of the arguments advanced in the petition, which upon the naked petition would be premature and profitless. Nevertheless, inasmuch as it is probable, (as before suggested,) there may be papers in the State Department relating to this claim, in order to facilitate their procurement as evidence for petitioner, the committee report the annexed resolution, and recommend its adoption

by the Senate; and a copy of the petition is also appended to this report in order that the same may be printed with it.

*To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:*

The memorial of Isabella Cole, executrix under the will of William Cole, late of Baltimore deceased,

RESPECTFULLY SHOWS:

That, in November, in the year eighteen hundred and twenty, the schooner Rampart, of the port of Baltimore, owned by said William Cole, a citizen of the United States, was, on her voyage to Lima, approaching the harbor of Callao, when, without any notice or provocation, she was, within the territory of Peru, fired upon by the batteries of the fortress of Callao, and very seriously injured. In the repair of the injuries resulting from that wanton attack, much expense and delay were incurred, and a necessary loss was sustained exceeding the sum of eight thousand dollars; but for particulars of the damage suffered from the outrage, as well as for other details, your memorialist refers to the memorial, in the name of the executors of William Cole, to the commissioner under the late treaty between this government and the republic of Peru.

Your memorialist further states, that the commander of the United States vessel of war, (Comodore Downs,) then in the waters of Callao, promptly and earnestly interposed, but without any avail, for redress from the Peruvian authorities, as was shown under the said memorial before the commissioner. And your memorialist states that to this day no indemnity has ever been rendered for the wrong thus done.

Your memorialist states that the claim just spoken of, made under the treaty with Peru, failed because it was understood that that treaty embraced no claims not included in a certain list made out by Mr. Larned, a minister of this government in Peru, although the claim was of a period covered by the treaty.

Your memorialist is advised that this claim, being thus denied indemnity by a limitation ordained by this government, the Peruvian government has ceased to be answerable for it, upon the view that she owes retribution for no losses sustained by our citizens beyond those specified as the subjects of complaint in the list referred to.

If such be the legitimate construction, and Peru is thus absolved, this government must be answerable for debarring satisfaction to the present demand, by so narrowing the protection justly due to all claims of the citizens of the United States within the periods embraced in the treaty, and in the exoneration of Peru.

Your memorialist has learned that, as an enforcing consideration for excluding the claim from the benefits of the treaty, the commissioner (under an assumption of fact not admitted by this memorialist) has regarded Peru as exempt in the case also, because (as sup-

posed) Spanish forces were in the fortification whence the wrong was done; at the particular period the Spaniards being for that time ascendant in the fluctuations of the contest then waging between Peru and Spain. But, whatever may have been the fact of the occasional supremacy of either of the belligerents, this government can regard only the recognized and organized government of the republic of Peru, and so hold it to liability for the measures or movements of any government or authority *de facto*, however transitory, or however imposed upon the Peruvian people. The feebleness or supineness of a country in incurring a foreign domination, and *failing* thus against the hazards of that very foreign rule to protect the citizens of a friendly power, does not avail to shield the disabled country from liability for the injury inflicted even by the intruding enemy.

This principle is one of accepted international law, indisputable here, after the vindication of it with such ample success in our convention with Naples, and the application of the doctrine under the commission of indemnity, under the treaty with Spain, (the Florida treaty,) and under other adjudications in cases of such national indemnities.

In every view, your memorialist suggests, therefore, and maintains that the republic of Peru owed reparation for this wrong; and this government has succeeded to the obligation, if Peru has been released from it by the restrictive terms of the satisfaction prescribed by the treaty.

Your memorialist therefore prays inquiry into the merits of the claim, and the condition of it in relation to the obligations of Peru; and that if Peru shall, by the force of the treaty, appear to be relieved from liability for the wrong in question, provision for satisfying the claim be made by the government of the United States; or that proceedings be directed to insure redress to your memorialist from Peru, if that government shall appear to be still liable.

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*Resolved*, That the memorial of Isabella Cole, executrix of William Cole, deceased, together with the report of the Committee of Claims of the Senate thereon, at this session, be transmitted by the Secretary of the Senate to the Secretary of State; and that the Secretary of State be required to transmit to the Senate the original or copies of all the papers in the State Department relating to said claim, and also of the proceedings had in relation thereto, and the decisions thereon, and to report fully as to said claim.

